

# EXHIBIT 40

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE DISTRICT OF DELAWARE

3 IN RE: \*  
4 24 HOUR FITNESS \* Chapter 11  
WORLDWIDE, INC., ET AL., \*  
5 Debtors. \* Case No.: 20-11558 (KBO)  
\*  
6 \_\_\_\_\_ \* (Jointly Administered)  
\*  
7 24 HOUR FITNESS \*  
WORLDWIDE, INC., \*  
8 Plaintiff, \*  
\*  
9 VS. \* Adv. Proc. No. 20-51051 (KBO)  
\*  
10 CONTINENTAL CASUALTY \*  
COMPANY, ET AL., \*  
11 Defendants. \*

12

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16 ORAL AND VIDEOTAPED DEPOSITION OF ODELL BRADLEY

17 VOLUME 1

18 MAY 27, 2022

19 (Reported Remotely)

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1 ORAL AND VIDEOTAPED DEPOSITION of ODELL BRADLEY,  
2 produced as a witness at the instance of the Plaintiff,  
3 and remotely duly sworn, was taken in the above-styled  
4 and numbered cause on May 27, 2022, from 11:00 a.m. to  
5 4:25 p.m., before Carol Jenkins, CSR, RPR, CRR, in and  
6 for the State of Texas, reported by machine shorthand,  
7 with the Witness in Dallas, Texas, pursuant to the  
8 Federal Rules of Civil Procedure, the Emergency Order  
9 Regarding the COVID-19 State of Disaster, and the  
10 provisions stated on the record or attached hereto.

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1 before?

2 A. Yes.

3 Q. And do you recall having thought about what  
4 would need to be shown in order to establish the  
5 presence of and the spread of communicable diseases  
6 under this section?

7 MR. INGERMAN: Objection, asked and  
8 answered.

9 You can answer it again.

10 A. No. And because I never had enough information  
11 to make a decision.

12 Q. (By Mr. Weiss) Okay. And when you say you  
13 never had enough information to make a decision, what  
14 type of information were you looking for?

15 A. To reflect back, some of the questions that we  
16 sent out to the insured were not answered.

17 Q. If the insured had said that somebody with  
18 COVID was at a location, would that indicate that there  
19 was a presence of COVID at the location?

20 MR. INGERMAN: Form, and calls for  
21 speculation.

22 You can answer.

23 A. No.

24 Q. (By Mr. Weiss) Okay. So what would you need  
25 to see in order to demonstrate to you that there was the

1 see that the -- that this entry continues on to page 13  
2 and then goes over to page 14. And then if we could  
3 look at page 14, at the very end there's a sentence that  
4 said -- from you that says: Emailed the market to  
5 request engagement of coverage counsel moving forward,  
6 pending response.

7 Do you see that?

8 Oh, you're on mute.

9 A. Yes, I do see it.

10 Q. All right. Why did you email the market to  
11 request the engagement of coverage counsel in connection  
12 with market report No. 7?

13 A. I do not recall at this time.

14 Q. Do you recall emailing the market to request  
15 the engagement of coverage counsel?

16 A. Based on the notes in front of me, yes.

17 Q. Do you remember what you wanted coverage  
18 counsel to evaluate?

19 A. I do not recall.

20 Q. Did you have any internal discussions at CNA  
21 about engaging coverage counsel around this time?

22 A. I do not recall.

23 Q. All right. All right. Let's mark as  
24 Exhibit 14 some -- the series of emails. The first one  
25 is July -- the first one on the page is July 1st, 2020,

1 at 1:56 p.m. from Andrea Matott at Beazley. The Bates  
2 number that I have is CNA 1403 and 1406.

3 MR. WEISS: And for the court reporter,  
4 this is document No. 15.

5 (Exhibit 14 marked.)

6 Q. (By Mr. Weiss) Do you have this in front of  
7 you, Mr. Bradley?

8 A. Yes.

9 Q. And if you could turn to the second page of the  
10 exhibit, there's an email from you dated June 25th,  
11 2020, at 11:57 a.m. to Mike Allen and various other  
12 people.

13 Do you see that?

14 A. June 25th?

15 Q. Yeah.

16 A. 11:57?

17 Q. Yeah.

18 A. Yes, I do see that.

19 Q. Okay. Do you remember who some of these people  
20 were? Let's go through them. Kimberly James from  
21 Samp -- from Sompo, it looks like?

22 A. Correct. I don't recall who each individual is  
23 on -- on the market.

24 Q. Okay. Then in your email, you wrote: After  
25 further review of endorsement for interruption by

1 communicable disease, I believe it is best to engage  
2 coverage counsel moving forward.

3 Do you see that?

4 A. Yes.

5 Q. And do you believe that this is the email that  
6 is referred to in the claim notes that we were just  
7 looking at for the same date, June 25th, 2020?

8 A. It appears so.

9 Q. And then you include some of the language from  
10 the communicable disease endorsement, and you wrote:  
11 There seems to be a good chance business interruption  
12 coverage will be triggered. I think we all agree.

13 Do you see that?

14 A. Yes.

15 Q. And so by this -- this point in June of 2020,  
16 you had already received a number of rounds of responses  
17 to information requests from the insured that we've  
18 looked at, correct?

19 A. Yes.

20 Q. Okay. And you've already had a number of calls  
21 with the market by this point; is that right?

22 A. Yes.

23 Q. And your comment that there seems to be a good  
24 chance business interruption coverage will be triggered  
25 was based upon your analysis of the information that had

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12 REPORTER'S CERTIFICATE

13 DEPOSITION OF ODELL BRADLEY

14 MAY 27, 2022

16 I, CAROL JENKINS, Certified Shorthand  
17 Reporter in and for the State of Texas, hereby certify  
18 that this transcript is a true record of the testimony  
19 given by the witness named herein, after said witness  
20 was duly sworn by me.

21 I further certify that the deposition  
22 transcript was submitted on \_\_\_\_\_,  
23 \_\_\_\_\_ to the witness or to the attorney for the  
24 witness for examination, signature, and return to me by  
25 \_\_\_\_\_, \_\_\_\_\_.

**NELL McCALLUM & ASSOCIATES, INC.**

**Exhibit 40 to Plaintiff's Appendix of Evidence  
in support of Plaintiff's Motion for Partial Summary Judgment**

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1 I further certify the amount of time used  
2 by each party at the deposition is as follows:

3 Mr. David E. Weiss - (04h16m)

4 Mr. Brett Ingerman - (00h02m)

5 Ms. Courtney Murphy - (00h00m)

6 Mr. Austin Westergom - (00h00m)

7 Ms. Marlie McDonnell - (00h00m)

8 Mr. Joel L. McNabney - (00h00m)

9 Ms. Elizabeth Kniffen - (00h00m)

10 I further certify that I am neither  
11 attorney nor counsel for, related to, nor employed by  
12 any of the parties to the action in which this testimony  
13 was taken. Further, I am not a relative or employee of  
14 any attorney of record in this cause, nor do I have a  
15 financial interest in the action.

16 SUBSCRIBED AND SWORN TO by the undersigned  
17 on this the 3rd day of June, 2022.

18  
19   
20

21 CAROL JENKINS, CSR, RPR, CRR

22 Certificate No. 2660

23 Date of Expiration: 8/31/2023

24 Nell McCallum & Associates, Inc.

25 Firm Registration No. 10095

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